

**STATE OF WASHINGTON  
KITSAP COUNTY SUPERIOR COURT**

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,  <div style="text-align: right;">Plaintiff,</div>  <div style="text-align: center;">v.</div> KITSAP COUNTY, a political subdivision of the State of Washington,  <div style="text-align: right;">Defendant.</div>	NO.   CONSENT DECREE
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## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and Kitsap County (Defendant) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendant to undertake the following remedial action(s) at the facility known as Bainbridge Island Landfill:

(1) Execute the Cleanup Action Plan (Exhibit B) of this Consent Decree. Ecology has determined that these actions are necessary to protect public health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, Defendant agrees to its entry and agrees to be bound by its terms.

D. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree, or previous orders concerning the Site issued by Ecology.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

1 F. The Court is fully advised of the reasons for entry of this Decree, and good  
2 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS  
3 FOLLOWS:

## 4 II. JURISDICTION

5 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
6 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

7 B. Authority is conferred upon the Washington State Attorney General by RCW  
8 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
9 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious  
10 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be  
11 entered as a consent decree issued by a court of competent jurisdiction.

12 C. Ecology has determined that a release or threatened release of hazardous  
13 substances has occurred at the Site, which is the subject of this Decree.

14 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15),  
15 of Ecology's determination that the Defendant is a potentially liable person for the Site and that  
16 there has been a release or threatened release of hazardous substances at the Site.

17 E. The actions to be taken pursuant to this Decree are necessary to protect public  
18 health, welfare, and the environment.

19 F. Defendant has agreed to undertake the actions specified in this Decree and  
20 consents to the entry of this Decree under the MTCA.

## 21 III. PARTIES BOUND

22 This Decree shall apply to and be binding upon the signatories to this Decree (Parties),  
23 their successors and assigns. The undersigned representative of each Party hereby certifies that  
24 he or she is fully authorized to enter into this Decree and to execute and legally bind such Party  
25 to comply with the Decree. Defendant agrees to undertake all actions required by the terms

1 and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No  
2 change in status, with regard to political makeup or otherwise, shall alter the responsibility of  
3 the Defendant under this Decree. Defendant shall provide a copy of this Decree to all agents,  
4 contractors and subcontractors retained to perform work required by this Decree and shall  
5 ensure that all work undertaken by such contractors and subcontractors will be in compliance  
6 with this Decree.

#### 7 **IV. DEFINITIONS**

8 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms  
9 in this Decree.

10 A. Site: The Site, referred to as the Bainbridge Island Landfill, is located on  
11 Vincent Road, Bainbridge Island, Washington 98110, Section 33, Township 25 North, Range 2  
12 East. The Site is more particularly described in Exhibit A to this Decree which is a detailed  
13 site diagram.

14 B. Parties: Refers to the Washington State Department of Ecology and Kitsap  
15 County, a municipal corporation organized under the laws of the State of Washington

16 C. Defendant: Refers to Kitsap County.

17 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
18 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
19 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

#### 20 **V. STATEMENT OF FACTS**

21 Ecology makes the following finding of facts without any express or implied  
22 admissions by Defendant.

23 A. Kitsap County is an "owner" as defined in RCW 70.105D.020(6). Kitsap  
24 County obtained ownership of the property in 1942 through a real property tax foreclosure .  
25

1 B. The facility is known as the Bainbridge Island Landfill and is located on  
2 Vincent Road, Bainbridge Island, Washington 98110, Section 33, Township 25 North, Range 2  
3 East.

4 C. The Bainbridge Island Landfill Remedial Investigation Report by CH2M Hill,  
5 dated June 4, 1999, has identified hazardous substances at concentrations that exceed State and  
6 Federal cleanup levels.

7 D. The Bainbridge Island Landfill was primarily a municipal waste landfill serving  
8 the residents of Bainbridge Island. While it was initially operated by Kitsap County, in 1952 it  
9 was leased to a series of private operators. The landfill ceased accepting waste in 1975 and  
10 was closed in 1977. There is currently a solid waste transfer and recycling station located on a  
11 portion of the Site.

12 E. The Remedial Investigation/Feasibility Study report was finalized in November  
13 2000, after receiving public review and comment (See Ecology file Bainbridge Island Landfill  
14 SIT 3.8.

15 F. The Cleanup Action Plan is attached as Exhibit B to this Consent Decree.

## 16 VI. WORK TO BE PERFORMED

17 This Decree contains a program designed to protect public health, welfare and the  
18 environment from the known release, or threatened release, of hazardous substances or  
19 contaminants at, on, or from the Site.

20 A. Kitsap County shall perform all tasks set forth in the Cleanup Action Plan,  
21 attached as Exhibit B.

22 B. Kitsap County shall implement the Cleanup Action Plan in accordance with the  
23 Cleanup Action Schedule, attached as Exhibit C, subject to Section XVIII of this Decree  
24 (Extension of Schedule).

1 C. The Engineering Design Report, Construction Plans and Specifications,  
2 Compliance Monitoring Plan, and Operations and Maintenance Plan are subject to review and  
3 approval by Ecology before Kitsap County performs work under those plans. Kitsap County  
4 shall incorporate Ecology's comments into the final versions of these documents. Upon  
5 approval, these documents shall become integral and enforceable parts of this Decree, and shall  
6 be complied with by Kitsap County.

7 D. Within thirty (30) days of completion of the installation of the cover required  
8 under the Cleanup Action Plan, Kitsap County shall record with the Kitsap County Auditor's  
9 Office the Restrictive Covenant attached to this Decree as Exhibit D and provide Ecology  
10 proof of such recording.

11 E. Defendant agrees not to perform any remedial actions outside the scope of this  
12 decree unless the Parties agree to amend the scope of work to cover these actions. All work  
13 conducted under this decree shall be done in accordance with chapter 173-340 WAC unless  
14 otherwise provided herein.

15 F. Any proposed minor changes to the work to be performed will be documented  
16 and approved by Ecology. Defendant, or its representative(s), will contact Ecology to propose  
17 any minor changes to the work to be performed prior to undertaking such changes. Initial  
18 contact and approval may be accomplished either verbally or in writing. Proposals for minor  
19 changes to the work to be performed must include justification for the changes, and Ecology's  
20 approval or disapproval must be documented in writing. Ecology will determine whether  
21 Defendant's proposed changes are minor or substantial. Substantial changes will be addressed  
22 pursuant to Section XVII of this Decree (Amendment of the Consent Decree).

1                                   **VII.    DESIGNATED PROJECT COORDINATORS**

2           The project coordinator for Ecology is:

3                   Brian S. Sato, P.E.  
4                   Toxics Cleanup Program  
5                   Department of Ecology  
6                   3190 160<sup>th</sup> Ave SE  
7                   Bellevue, WA 98008-5452

8           The project coordinator for Defendant is:

9                   Michelle Miller, Ph.D.  
10                  Kitsap County Department of Public Works  
11                  Solid Waste Division  
12                  614 Division Street, MS-27  
13                  Port Orchard, WA 98366

14           Each project coordinator shall be responsible for overseeing the implementation of this  
15 Decree. The Ecology project coordinator will be Ecology's designated representative at the  
16 Site. To the maximum extent possible, communications between Ecology and the Defendant  
17 and all documents, including reports, approvals, and other correspondence concerning the  
18 activities performed pursuant to the terms and conditions of this Decree, shall be directed  
19 through the project coordinators. The project coordinators may designate, in writing, working  
20 level staff contacts for all or portions of the implementation of the remedial work required by  
21 this Decree. The project coordinators may agree to minor modifications to the work to be  
22 performed without formal amendments to this Decree. Minor modifications will be  
23 documented in writing by Ecology.

24           Any Party may change its respective project coordinator. Written notification shall be  
25 given to the other Parties at least ten (10) calendar days prior to the change.

26                                   **VIII.   PERFORMANCE**

27           All work performed pursuant to this Decree shall be under the direction and  
28 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with



1 experience and expertise in hazardous waste site investigation and cleanup. Any construction  
2 work must be under the supervision of a professional engineer. Defendant shall notify Ecology  
3 in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any  
4 contractors and subcontractors to be used in carrying out the terms of this Decree, in advance  
5 of their involvement at the Site.

## 6 **IX. ACCESS**

7 Ecology or any Ecology authorized representatives shall have the authority to enter and  
8 freely move about all property at the Site at all reasonable times with reasonable notice for the  
9 purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work  
10 being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the  
11 terms of this Decree; conducting such tests or collecting such samples as Ecology may deem  
12 necessary; using a camera, sound recording, or other documentary type equipment to record  
13 work done pursuant to this Decree; and verifying the data submitted to Ecology by the  
14 Defendant. All parties with access to the Site pursuant to this paragraph shall comply with  
15 approved health and safety plans.

## 16 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

17 With respect to the implementation of this Decree, Defendant shall make the results of  
18 all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to  
19 Ecology and shall submit these results in accordance with Section XI (Progress Reports) of this  
20 Decree.

21 If requested by Ecology, Defendant shall allow split or duplicate samples to be taken by  
22 Ecology and/or its authorized representatives of any samples collected by Defendant pursuant  
23 to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in  
24 advance of any sample collection or work activity at the Site. Ecology shall, upon request,  
25 allow split or duplicate samples to be taken by Defendant or its authorized representatives of

1 any samples collected by Ecology pursuant to the implementation of this Decree provided it  
2 does not interfere with the Department's sampling. Without limitation on Ecology's rights  
3 under Section IX (Access), Ecology shall endeavor to notify Defendant prior to any sample  
4 collection activity.

## 5 **XI. PROGRESS REPORTS**

6 During the construction phase of the Cleanup Action Plan, Defendant shall submit to  
7 Ecology written monthly progress reports which describe the actions taken during the previous  
8 month to implement the requirements of this Decree. The progress shall include the following:

- 9 A. A list of on-site activities that have taken place during the reporting period;
- 10 B. Detailed description of any deviations from required tasks not otherwise  
11 documented in project plans or amendment requests;
- 12 C. Description of all deviations from the schedule (Exhibit C) during the current  
13 month and any planned deviations in the upcoming month;
- 14 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
15 compliance with the schedule;
- 16 E. All validated raw data (including laboratory analysis) received by the Defendant  
17 during the past month and an identification of the source of the sample;
- 18 F. A list of deliverables for the upcoming month if different from the schedule.

19 Following the construction phase, a letter report accompanied by the most recent copy  
20 of the electronic database containing all monitoring data will be submitted to Ecology within  
21 60 days of each monitoring event. The letter report shall include a discussion of any other  
22 remediation-related activities which have occurred on the Site since the last report was  
23 submitted.

24 All progress reports shall be submitted by the tenth day of the month in which they are  
25 due after the effective date of this Decree. Unless otherwise specified, progress reports and

1 any other documents submitted pursuant to this Decree shall be sent by U.S. mail, to Ecology's  
2 project coordinator.

## 3 **XII. RETENTION OF RECORDS**

4 Defendant shall preserve, during the pendency of this Decree and for ten (10) years  
5 from the date this Decree is no longer in effect as provided in Section XXVII (Duration of  
6 Decree), all records, reports, documents, and underlying data in its possession relevant to the  
7 implementation of this Decree and shall insert in contracts with project contractors and  
8 subcontractors a similar record retention requirement. Upon request of Ecology, Defendant  
9 shall make all non-archived records available to Ecology and allow access for review. All  
10 archived records shall be made available to Ecology within a reasonable period of time.  
11 Nothing in this Section is intended to waive otherwise applicable legal privileges.

## 12 **XIII. TRANSFER OF INTEREST IN PROPERTY**

13 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,  
14 or other interest held by Kitsap County in any portion of the Site shall be consummated  
15 without provision for continued operation and maintenance of any containment system,  
16 treatment system, and monitoring system installed or implemented pursuant to this Decree.

17 Prior to transfer of any legal or equitable interest in all or any portion of the property,  
18 and during the effective period of this Decree, Defendant shall serve a copy of this Decree  
19 upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of  
20 the property; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology  
21 of said contemplated transfer.

## 22 **XIV. RESOLUTION OF DISPUTES**

23 A. In the event a dispute arises as to an approval, disapproval, proposed  
24 modification or other decision or action by Ecology's project coordinator, the Parties shall  
25 utilize the dispute resolution procedure set forth below.

1 (1) Upon receipt of the Ecology project coordinator's decision, the  
2 Defendant has fourteen (14) days within which to notify Ecology's project coordinator of its  
3 objection to the decision.

4 (2) The Parties' project coordinators shall then confer in an effort to resolve  
5 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,  
6 Ecology's project coordinator shall issue a written decision.

7 (3) Defendant may then request Ecology management review of the  
8 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager  
9 within ten (10) days of receipt of Ecology's project coordinator's decision.

10 (4) Ecology's Section Manager shall conduct a review of the dispute and  
11 shall issue a written decision regarding the dispute within thirty (30) days of the Defendant's  
12 request for review. The Section Manager's decision shall be Ecology's final decision on the  
13 disputed matter.

14 B. If Ecology's final written decision is unacceptable to Defendant, Defendant has  
15 the right to submit the dispute to the Court for resolution. The Parties agree that one judge  
16 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising  
17 under this Decree. In the event Defendant presents an issue to the Court for review, the Court  
18 shall review the action or decision of Ecology on the basis of whether such action or decision  
19 was arbitrary and capricious and render a decision based on such standard of review.

20 C. The Parties agree to only utilize the dispute resolution process in good faith and  
21 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
22 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,  
23 the other Party may seek sanctions.

1 Implementation of these dispute resolution procedures shall not provide a basis for  
2 delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule  
3 extension or the Court so orders.

#### 4 **XV. CONTRIBUTION PROTECTION**

5 With regard to claims for contribution against Defendant, the Parties intend that  
6 Defendant will obtain the protection against claims for contribution for matters addressed in  
7 this Decree as is provided under MTCA, RCW 70.105.040(4)(d).

#### 8 **XVI. COVENANT NOT TO SUE; REOPENERS**

9 A. In consideration of Defendant's compliance with the terms and conditions of  
10 this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all  
11 administrative, legal, and equitable remedies and enforcement actions available to the State  
12 against Defendant regarding all matters within the scope of this Consent Decree.

13 B. Reopeners: In the following circumstances, Ecology may exercise its full legal  
14 authority to address releases of hazardous substances at the Site, notwithstanding the Covenant  
15 Not To Sue set forth above:

16 (1) In the event Defendant fails to comply with the terms and conditions of  
17 this Decree, including all Exhibits, and after written notice of noncompliance, such failure is  
18 not cured by Defendant within thirty (30) days of receipt of notice of noncompliance.

19 (2) In the event factors not known at the time of entry of this Decree and not  
20 disclosed to Ecology are discovered and such factors present a previously unknown threat to  
21 human health or the environment and are not addressed by the Cleanup Action Plan (Exhibit  
22 B). If such factors are discovered, Ecology shall give written notice to Defendant.

23 (3) Upon Ecology's determination that actions beyond the terms of this  
24 Decree are necessary to abate an emergency situation which threatens public health, welfare, or  
25 the environment.

1 C. Applicability: The Covenant Not To Sue set forth above shall have no  
2 applicability whatsoever to:

- 3 (1) Criminal liability;
- 4 (2) Actions against PLPs not party to this Decree;
- 5 (3) Liability for damages for injury to, destruction of, or loss of natural  
6 resources.
- 7 (4) Determinations pursuant to groundwater monitoring that cleanup levels  
8 are being exceeded.

9 D. Ecology retains all of its legal and equitable rights against all persons, except as  
10 otherwise provided in this Decree.

#### 11 **XVII. AMENDMENT OF CONSENT DECREE**

12 This Decree may only be amended by a written stipulation among the Parties to this  
13 Decree that is entered by the Court or by order of the Court. Such amendment shall become  
14 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by  
15 any Party to the Decree.

16 Defendant shall submit any request for an amendment to Ecology for approval.  
17 Ecology shall indicate its approval or disapproval in a timely manner after the request for  
18 amendment is received. If the amendment to the Decree is substantial, Ecology will provide  
19 public notice and opportunity for comment. Reasons for the disapproval shall be stated in  
20 writing. If Ecology does not agree to any proposed amendment, the disagreement may be  
21 addressed through the dispute resolution procedures described in Section XIV (Resolution of  
22 Disputes) of this Decree.

#### 23 **XVIII. EXTENSION OF SCHEDULE**

24 A. An extension of schedule shall be granted only when a request for an extension  
25 is submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline

1 for which the extension is requested, and good cause exists for granting the extension. All  
2 extensions shall be requested in writing. The request shall specify the reason(s) the extension  
3 is needed.

4 An extension shall only be granted for such period of time as Ecology determines is  
5 reasonable under the circumstances. A requested extension shall not be effective until  
6 approved by Ecology or the Court. Ecology shall act upon any written request for extension in  
7 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section  
8 XVII (Amendment of Consent Decree) when a schedule extension is granted.

9 B. The burden shall be on the Defendant to demonstrate to the satisfaction of  
10 Ecology that the request for such extension has been submitted in a timely fashion and that  
11 good cause exists for granting the extension. Good cause includes, but is not limited to, the  
12 following.

13 (1) Circumstances beyond the reasonable control and despite the due  
14 diligence of Defendant including delays caused by unrelated third parties or Ecology, such as  
15 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents  
16 submitted by Defendant; or

17 (2) Acts of God, including fire, flood, blizzard, extreme temperatures,  
18 storm, or other unavoidable casualty; or

19 (3) Endangerment as described in Section XIX.

20 However, neither increased costs of performance of the terms of the Decree nor  
21 changed economic circumstances shall be considered circumstances beyond the reasonable  
22 control of Defendant.

23 C. Ecology may extend the schedule for a period not to exceed ninety (90) days,  
24 except where an extension is needed as a result of:  
25

1 (1) Delays in the issuance of a necessary permit which was applied for in a  
2 timely manner; or

3 (2) Other circumstances deemed exceptional or extraordinary by Ecology;  
4 or

5 (3) Endangerment as described in Section XIX.

6 Ecology shall give Defendant written notification in a timely fashion of any extensions  
7 granted pursuant to this Decree.

### 8 **XIX. ENDANGERMENT**

9 In the event Ecology determines that activities implementing or in noncompliance with  
10 this Decree, or any other circumstances or activities, are creating or have the potential to create  
11 a danger to the health or welfare of the people on the Site or in the surrounding area or to the  
12 environment, Ecology may order Defendant to stop further implementation of this Decree for  
13 such period of time as needed to abate the danger or may petition the Court for an order as  
14 appropriate. During any stoppage of work under this section, the obligations of Defendant  
15 with respect to the work under this Decree which is ordered to be stopped shall be suspended  
16 and the time periods for performance of that work, as well as the time period for any other  
17 work dependent upon the work which is stopped, shall be extended, pursuant to Section XVIII  
18 (Extension of Schedule) of this Decree, for such period of time as Ecology determines is  
19 reasonable under the circumstances.

20 In the event Defendant determines that activities undertaken in furtherance of this  
21 Decree or any other circumstances or activities are creating an endangerment to the people on  
22 the Site or in the surrounding area or to the environment, Defendant may stop implementation  
23 of this Decree for such period of time necessary for Ecology to evaluate the situation and  
24 determine whether Defendant should proceed with implementation of the Decree or whether  
25 the work stoppage should be continued until the danger is abated. Defendant shall notify



1 Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after  
2 such stoppage of work, and thereafter provide Ecology with documentation of the basis for the  
3 work stoppage. If Ecology disagrees with the Defendant's determination, it may order  
4 Defendant to resume implementation of this Decree. If Ecology concurs with the work  
5 stoppage, the Defendant's obligations shall be suspended and the time period for performance  
6 of that work, as well as the time period for any other work dependent upon the work which was  
7 stopped, shall be extended, pursuant to Section XVIII (Extension of Schedule) of this Decree,  
8 for such period of time as Ecology determines is reasonable under the circumstances. Any  
9 disagreements pursuant to the clause shall be resolved through the dispute resolution  
10 procedures in Section XIV.

## 11 **XX. OTHER ACTIONS**

12 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently  
13 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take  
14 any other enforcement action pursuant to available statutory authority under the following  
15 circumstances:

16 A. Where Defendant fails, after notice, to comply with any requirement of this  
17 Decree;

18 B. In the event or upon the discovery of a release or threatened release not  
19 addressed by this Decree;

20 C. Upon Ecology's determination that action beyond the terms of this Decree is  
21 necessary to abate an emergency situation which threatens public health or welfare or the  
22 environment; or

23 D. Upon the occurrence or discovery of a situation beyond the scope of this Decree  
24 as to which Ecology would be empowered to perform any remedial action or to issue an order  
25 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the

1 geographic Site described in Exhibit A and to those contaminants which Ecology knows to be  
2 at the Site when this Decree is entered.

3 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural  
4 resources resulting from the release or threatened release of hazardous substances from  
5 Bainbridge Island Landfill.

6 Ecology reserves the right to take any enforcement action whatsoever, including a cost  
7 recovery action, against potentially liable persons not party to this Decree.

## 8 **XXI. INDEMNIFICATION**

9 To the extent allowed by law, Defendant agrees to indemnify and save and hold the  
10 State of Washington, its employees, and agents harmless from any and all claims or causes of  
11 action for death or injuries to persons or for loss or damage to property arising from or on  
12 account of acts or omissions of Defendant, its officers, employees, agents, or contractors in  
13 entering into and implementing this Decree. However, the Defendant shall not indemnify the  
14 State of Washington nor save nor hold its employees and agents harmless from any claims or  
15 causes of action arising out of the negligent acts or omissions of the State of Washington, or  
16 the employees or agents of the State, in implementing the activities pursuant to this Decree.

## 17 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

18 A. All actions carried out by Defendant pursuant to this Decree shall be done in  
19 accordance with all applicable federal, state, and local requirements, including requirements to  
20 obtain necessary permits, except as provided in paragraph B. of this section.

21 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters  
22 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
23 local government permits or approvals for the remedial action under this Decree that are  
24 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the  
25 Cleanup Action Plan, and are binding and enforceable requirements of the Decree.

1 Defendant(s) has a continuing obligation to determine whether additional permits or  
2 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
3 action under this Decree. In the event either Defendant or Ecology determines that additional  
4 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
5 remedial action under this Decree, it shall promptly notify the other Party of this determination.  
6 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
7 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly  
8 consult with the appropriate state and/or local agencies and provide Ecology with written  
9 documentation from those agencies of the substantive requirements those agencies believe are  
10 applicable to the remedial action. Ecology shall make the final determination on the additional  
11 substantive requirements that must be met by Defendant and on how Defendant must meet  
12 those requirements. Ecology shall inform Defendant in writing of these requirements. Once  
13 established by Ecology, the additional requirements shall be enforceable requirements of this  
14 Decree. Defendant shall not begin or continue the remedial action potentially subject to the  
15 additional requirements until Ecology makes its final determination.

16 Ecology shall ensure that notice and opportunity for comment is provided to the public  
17 and appropriate agencies prior to establishing the substantive requirements under this section.

18 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
19 exemption from complying with the procedural requirements of the laws referenced in RCW  
20 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary  
21 for the State to administer any federal law, the exemption shall not apply and the Defendant  
22 shall comply with both the procedural and substantive requirements of the laws referenced in  
23 RCW 70.105D.090(1), including any requirements to obtain permits.  
24  
25

1                                   **XXIII. REMEDIAL AND INVESTIGATIVE COSTS**

2           The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree. These  
3 costs shall include work performed by Ecology or its contractors for, or on, the Site under  
4 chapter 70.105D RCW both prior to and subsequent to the issuance of this Decree for  
5 investigations, remedial actions, and Decree preparation, negotiations, oversight and  
6 administration. Ecology costs shall include costs of direct activities and support costs of direct  
7 activities as defined in WAC 173-340-550(2). The Defendant agrees to pay the required  
8 amount within ninety (90) days of receiving from Ecology an itemized statement of costs that  
9 includes a summary of costs incurred, an identification of involved staff, and the amount of  
10 time spent by involved staff members on the project. A general statement of work performed  
11 will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay  
12 Ecology's costs within ninety (90) days of receipt of the itemized statement will result in  
13 interest charges.

14                                   **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

15           If Ecology determines that Defendant has failed without good cause to implement the  
16 remedial action, Ecology may, after notice to Defendant, perform any or all portions of the  
17 remedial action that remain incomplete. If Ecology performs all or portions of the remedial  
18 action because of the Defendant's failure to comply with its obligations under this Decree,  
19 Defendant shall reimburse Ecology for the costs of doing such work in accordance with  
20 Section XXIII (Remedial and Investigative Costs), provided that Defendant is not obligated  
21 under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond  
22 the scope of this Decree.

23                                   **XXV. FIVE YEAR REVIEW**

24           As remedial action, including ground water monitoring, continues at the Site, the  
25 Parties agree to review the progress of remedial action at the Site, and to review the data

1 accumulated as a result of site monitoring as often as is necessary and appropriate under the  
2 circumstances. At least every five (5) years the Parties shall meet to discuss the status of the  
3 Site and the need, if any, of further remedial action at the Site. Ecology reserves the right to  
4 require further remedial action at the Site under appropriate circumstances. This provision  
5 shall remain in effect for the duration of the Decree.

## 6 **XXVI. PUBLIC PARTICIPATION**

7 Ecology shall maintain the responsibility for public participation at the Site. However,  
8 Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

9 A. Prepare drafts of public notices and fact sheets at important stages of the  
10 remedial action, such as the submission of the Cleanup Action Plan. Ecology will finalize  
11 (including editing if necessary) and distribute such fact sheets and prepare and distribute public  
12 notices of Ecology's presentations and meetings;

13 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
14 and fact sheets, and before major meetings with the interested public and local governments.  
15 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact  
16 sheets, and before major meetings with the interested public and local governments;

17 C. Participate in public presentations on the progress of the remedial action at the  
18 Site. Participation may be through attendance at public meetings to assist in answering  
19 questions, or as a presenter;

20 D. In cooperation with Ecology, arrange and/or continue information repositories  
21 to be located at the Bainbridge Branch, Kitsap Regional Library at 1270 Madison Ave. North,  
22 Bainbridge Island; Kitsap County Department of Public Works, Solid Waste Division at 614  
23 Division Street, Port Orchard; and Ecology's Northwest Regional Office at 3190 160<sup>th</sup> Ave.  
24 Southeast, Bellevue. At a minimum, copies of the Remedial Investigation, Feasibility Study  
25

1 and Cleanup Action Plan, and all other similar documents relating to performance of the  
2 remedial action required by this Decree shall be promptly placed in these repositories.

### 3 **XXVII. DURATION OF DECREE**

4 This Decree shall remain in effect and the remedial program described in the Decree  
5 shall be maintained and continued until the Defendant has received written notification from  
6 Ecology that the requirements of this Decree have been satisfactorily completed.

### 7 **XXVIII. CERTIFICATE OF COMPLETION AND DELISTING**

8 Upon Ecology's determination of completion of all remedial actions and achievement  
9 of all cleanup standards specified in the Cleanup Action Plan (Exhibit B), except  
10 confirmational monitoring, Ecology shall issue a Certificate of Completion. Unless Ecology  
11 becomes aware of circumstances at the Site that present a previously unknown threat to human  
12 health or the environment, Ecology shall propose to remove the Site from the Hazard Ranking  
13 List, pursuant to WAC 173-340-330(4).

### 14 **XXIX. CLAIMS AGAINST THE STATE**

15 Defendant hereby agrees that it will not seek to recover any costs accrued in  
16 implementing the remedial action required by this Decree from the State of Washington or any  
17 of its agencies; and further, that the Defendant will make no claim against the State Toxics  
18 Control Account or any Local Toxics Control Account, other than a request for grant funding,  
19 for any costs incurred in implementing this Decree. Except as provided above, however,  
20 Defendant expressly reserves its right to seek to recover any costs incurred in implementing  
21 this Decree from any other potentially liable person.

### 22 **XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

23 This Decree has been the subject of public notice and comment under RCW  
24 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to  
25 a more expeditious cleanup of hazardous substances at the Site.

1 If the Court withholds or withdraws its consent to this Decree, it shall be null and void  
2 at the option of any Party and the accompanying Complaint shall be dismissed without costs  
3 and without prejudice. In such an event, no Party shall be bound by the requirements of this  
4 Decree.

5 **XXXI. EFFECTIVE DATE**

6 This Decree is effective upon the date it is entered by the Court.

7 For Kitsap County

ATTEST:

8  
9 By: \_\_\_\_\_  
Chair,  
Kitsap County Board of Commissioners

By: \_\_\_\_\_  
Clerk of the Board

10 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

11  
12 RUSSELL D. HAUGE  
Kitsap County Prosecuting Attorney

CHRISTINE O. GREGOIRE  
Attorney General

13  
14 \_\_\_\_\_  
15 SHELLEY E. KNEIP, WSBA #22711  
Deputy Prosecuting Attorney

\_\_\_\_\_

STEVEN J. THIELE, WSBA #20275  
Assistant Attorney General

16 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

17  
18 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

19  
20 \_\_\_\_\_  
JAMES PENDOWSKI  
Toxics Cleanup Program  
Program Manager

21  
22 Dated: \_\_\_\_\_

23 ///

24 ///

25 ///

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
JUDGE  
Kitsap County Superior Court